

AMENDED IN ASSEMBLY APRIL 29, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1008

Introduced by Assembly Member Dutton

February 20, 2003

An act to amend Section 17213.1 of the Education Code, relating to public schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1008, as amended, Dutton. Public school facilities siting.

Existing law sets forth various requirements regarding the siting, structural integrity, safety, and fitness-for-use of school buildings, including, but not limited to, the requirement that prior to acquiring a site, and as a condition of receiving state funding, a governing board of a school district contract with an environmental assessor for an environmental assessment of the proposed site.

Existing law requires that the Phase I environmental assessment of the site contain a recommendation that either a further investigation is not required, or that a preliminary endangerment assessment is needed.

This bill would authorize a governing board as an amendment to the Phase I environmental assessment, to include toxic sampling of agricultural fields pursuant to guidelines published by the Department of Toxic Substances Control, *as prescribed. The bill would require the amendment to be submitted to the Department of Toxic Substances Control and made available to the public.* This bill would require no other action pursuant to prescribed provisions prior to acquiring the

schoolsite if the sampling demonstrates that the levels of potential contaminants are at or below prescribed values.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17213.1 of the Education Code is
2 amended to read:

3 17213.1. As a condition of receiving state funding pursuant to
4 Chapter 12.5 (commencing with Section 17070.10), the governing
5 board of a school district shall comply with subdivision (a), and is
6 not required to comply with subdivision (a) of Section 17213,
7 prior to the acquisition of a schoolsite, or if the school district owns
8 or leases a schoolsite, prior to the construction of a project.

9 (a) Prior to acquiring a schoolsite, the governing board shall
10 contract with an environmental assessor to supervise the
11 preparation of, and sign, a Phase I environmental assessment of the
12 proposed schoolsite, unless the governing board decides to
13 proceed directly to a preliminary endangerment assessment, in
14 which case it shall comply with paragraph (4).

15 (1) The Phase I environmental assessment shall contain one of
16 the following recommendations:

17 (A) A further investigation of the site is not required.

18 (B) (i) Where the previous use of a proposed schoolsite was
19 limited only to agricultural purposes, the governing board of a
20 school district may include, as an amendment to the Phase I
21 environmental assessment, toxic sampling of the agricultural
22 fields pursuant to guidance published by the Department of Toxic
23 Substances Control. ~~If~~

24 (ii) *The amendment shall describe the results of the sampling*
25 *and of the procedures used for the sampling. The amendment shall*
26 *be submitted to the Department of Toxic Substances Control upon*
27 *completion of the sampling, and shall be made available to the*
28 *public upon request.*

29 (iii) *The amendment process pursuant to this subparagraph*
30 *applies only to the sampling of agricultural fields used for growing*
31 *crops. It does not apply to areas where pesticides were mixed,*
32 *stored, or disposed of. The amendment process pursuant to this*
33 *subparagraph does not apply to other areas where pesticides may*

1 *have accumulated, including, but not limited to, ponds, drainage*
2 *ditches, residences, barns, other buildings, or in other areas as*
3 *described in the guidance documents published by the Department*
4 *of Toxic Substances Control. Use of the amendment process*
5 *pursuant to this subparagraph does not alter the responsibility of*
6 *a school district to investigate portions of the site where other*
7 *hazardous materials may have been used or where asbestos may*
8 *be naturally occurring.*

9 (iv) *If the sampling demonstrates that the level of ~~any potential~~*
10 *contaminant is all potential contaminants are at or below the*
11 *screening values identified by the Department of Toxic Substances*
12 *Control, no other action pursuant to this article is required prior to*
13 *acquiring the schoolsite.*

14 (C) A preliminary endangerment assessment is needed,
15 including sampling or testing, to determine the following:

16 (i) If a release of hazardous material has occurred and, if so, the
17 extent of the release.

18 (ii) If there is the threat of a release of hazardous materials.

19 (iii) If a naturally occurring hazardous material is present.

20 (2) If the Phase I environmental assessment concludes that
21 further investigation of the site is not required, the signed
22 assessment, proof that the environmental assessor meets the
23 qualifications specified in subdivision (b) of Section 17210, and
24 the renewal fee shall be submitted to the Department of Toxic
25 Substances Control. The Department of Toxic Substances Control
26 shall conduct its review and approval, within 30 calendar days of
27 its receipt of that assessment, proof of qualifications, and the
28 renewal fee. In those instances in which the Department of Toxic
29 Substances Control requests additional information after receipt
30 of the Phase I environmental assessment pursuant to paragraph (3),
31 the Department of Toxic Substances Control shall conduct its
32 review and approval within 30 calendar days of its receipt of the
33 requested additional information. If the Department of Toxic
34 Substances Control concurs with the conclusion of the Phase I
35 environmental assessment that a further investigation of the site is
36 not required, the Department of Toxic Substances Control shall
37 approve the Phase I environmental assessment and shall notify, in
38 writing, the State Department of Education and the governing
39 board of the school district of the approval.

1 (3) If the Department of Toxic Substances Control determines
2 that the Phase I environmental assessment is not complete or
3 disapproves the Phase I environmental assessment, the department
4 shall inform the school district of the decision, the basis for the
5 decision, and actions necessary to secure department approval of
6 the Phase I environmental assessment. The school district shall
7 take actions necessary to secure the approval of the Phase I
8 environmental assessment, elect to conduct a preliminary
9 endangerment assessment, or elect not to pursue the acquisition or
10 the construction project. To facilitate completion of the Phase I
11 environmental assessment, the information required by this
12 paragraph may be provided by telephonic or electronic means.

13 (4) (A) If the Department of Toxic Substances Control
14 concludes after its review of a Phase I environmental assessment
15 pursuant to this section that a preliminary endangerment
16 assessment is needed, the Department of Toxic Substances Control
17 shall notify, in writing, the State Department of Education and the
18 governing board of the school district of that decision and the basis
19 for that decision. The school district shall submit to the State
20 Department of Education the Phase I environmental assessment
21 and requested additional information, if any, that was reviewed by
22 the Department of Toxic Substances Control pursuant to that
23 subparagraph. Submittal of the Phase I assessment and additional
24 information, if any, to the State Department of Education shall be
25 prior to the State Department of Education issuance of final site or
26 plan approvals affected by that Phase I assessment.

27 (B) If the Phase I environmental assessment concludes that a
28 preliminary endangerment assessment is needed, or if the
29 Department of Toxic Substances Control concludes after it
30 reviews a Phase I environmental assessment pursuant to this
31 section that a preliminary endangerment assessment is needed, the
32 school district shall either contract with an environmental assessor
33 to supervise the preparation of, and approve, a preliminary
34 endangerment assessment of the proposed schoolsite and enter
35 into an agreement with the Department of Toxic Substances
36 Control to oversee the preparation of the preliminary
37 endangerment assessment or elect not to pursue the acquisition or
38 construction project. The agreement entered into with the
39 Department of Toxic Substances Control may be entitled an
40 “Environmental Oversight Agreement” and shall reference this



1 paragraph. A school district may, with the concurrence of the
2 Department of Toxic Substances Control, enter into an agreement
3 with the Department of Toxic Substances Control to oversee the
4 preparation of a preliminary endangerment assessment without
5 first having prepared a Phase I environmental assessment. Upon
6 request from the school district, the Director of the Department of
7 Toxic Substances Control shall exercise his or her authority to
8 designate a person to enter the site and inspect and obtain samples
9 pursuant to Section 25358.1 of the Health and Safety Code, if the
10 director determines that the exercise of that authority will assist in
11 expeditiously completing the preliminary endangerment
12 assessment. The preliminary endangerment assessment shall
13 contain one of the following conclusions:

14 (i) A further investigation of the site is not required.

15 (ii) A release of hazardous materials has occurred, and if so, the
16 extent of the release, that there is the threat of a release of
17 hazardous materials, or that a naturally occurring hazardous
18 material is present, or any combination thereof.

19 (5) The school district shall submit the preliminary
20 endangerment assessment to the Department of Toxic Substances
21 Control for its review and approval and to the State Department of
22 Education for its files. The school district may entitle a document
23 that is meant to fulfill the requirements of a preliminary
24 endangerment assessment a “preliminary environmental
25 assessment” and that document shall be deemed to be a
26 preliminary endangerment assessment if it specifically refers to
27 the statutory provisions whose requirements it intends to meet and
28 the document meets the requirements of a preliminary
29 endangerment assessment.

30 (6) At the same time a school district submits a preliminary
31 endangerment assessment to the Department of Toxic Substances
32 Control pursuant to paragraph (5), the school district shall publish
33 a notice that the assessment has been submitted to the department
34 in a local newspaper of general circulation, and shall post the
35 notice in a prominent manner at the proposed schoolsite that is the
36 subject of that notice. The notice shall state the school district’s
37 determination to make the preliminary endangerment assessment
38 available for public review and comment pursuant to
39 subparagraph (A) or (B):



(A) If the school district chooses to make the assessment available for public review and comment pursuant to this subparagraph, it shall offer to receive written comments for a period of at least 30 calendar days after the assessment is submitted to the Department of Toxic Substances Control, commencing on the date the notice is originally published, and shall hold a public hearing to receive further comments. The school district shall make all of the following documents available to the public upon request through the time of the public hearing:

(i) The preliminary endangerment assessment.

(ii) The changes requested by the Department of Toxic Substances Control for the preliminary endangerment assessment, if any.

(iii) Any correspondence between the school district and the Department of Toxic Substances Control that relates to the preliminary endangerment assessment.

For the purposes of this subparagraph, the notice of the public hearing shall include the date and location of the public hearing, and the location where the public may review the documents described in clauses (i) to (iii), inclusive. If the preliminary endangerment assessment is revised or altered following the public hearing, the school district shall make those revisions or alterations available to the public. The school district shall transmit a copy of all public comments received by the school district on the preliminary endangerment assessment to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall complete its review of the preliminary endangerment assessment and public comments received thereon and shall either approve or disapprove the assessment within 30 calendar days of the close of the public review period. If the Department of Toxic Substances Control determines that it is likely to disapprove the assessment prior to its receipt of the public comments, it shall inform the school district of that determination and of any action that the school district is required to take for the Department of Toxic Substances Control to approve the assessment.

(B) If the school district chooses to make the preliminary endangerment assessment available for public review and comment pursuant to this subparagraph, the Department of Toxic Substances Control shall complete its review of the assessment

1 within 60 calendar days of receipt of the assessment and shall
2 either return the assessment to the school district with comments
3 and requested modifications or requested further assessment or
4 concur with the adequacy of the assessment pending review of
5 public comment. If the Department of Toxic Substances Control
6 concurs with the adequacy of the assessment, and the school
7 district proposes to proceed with site acquisition or a construction
8 project, the school district shall make the assessment available to
9 the public on the same basis and at the same time it makes available
10 the draft environmental impact report or negative declaration
11 pursuant to the California Environmental Quality Act (Division 13
12 (commencing with Section 21000) of the Public Resources Code)
13 for the site, unless the document developed pursuant to the
14 California Environmental Quality Act (Division 13 (commencing
15 with Section 21000) of the Public Resources Code) will not be
16 made available until more than 90 days after the assessment is
17 approved, in which case the school district shall, within 60 days of
18 the approval of the assessment, separately publish a notice of the
19 availability of the assessment for public review in a local
20 newspaper of general circulation. The school district shall hold a
21 public hearing on the preliminary endangerment assessment and
22 the draft environmental impact report or negative declaration at
23 the same time, pursuant to the California Environmental Quality
24 Act (Division 13 (commencing with Section 21000) of the Public
25 Resources Code). All public comments pertaining to the
26 preliminary endangerment assessment shall be forwarded to the
27 Department of Toxic Substances Control immediately. The
28 Department of Toxic Substances Control shall review the public
29 comments forwarded by the school district and shall approve or
30 disapprove the preliminary endangerment assessment within 30
31 days of the district's approval action of the environmental impact
32 report or the negative declaration.

33 (7) The school district shall comply with the public
34 participation requirements of Sections 25358.7 and 25358.7.1 of
35 the Health and Safety Code and other applicable provisions of the
36 state act with respect to those response actions only if further
37 response actions beyond a preliminary endangerment assessment
38 are required and the district determines that it will proceed with the
39 acquisition or construction project.

(8) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(10) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

1 (11) The school district shall reimburse the Department of
2 Toxic Substances Control for all of the department's response
3 costs.

4 (b) The costs incurred by the school districts when complying
5 with this section are allowable costs for purposes of an applicant
6 under Chapter 12.5 (commencing with Section 17070.10) of Part
7 10 and may be reimbursed in accordance with Section 17072.13.

8 (c) A school district that releases a Phase I environmental
9 assessment, a preliminary endangerment assessment, or
10 information concerning either of these assessments, any of which
11 is required by this section, may not be held liable in any action filed
12 against the school district for making either of these assessments
13 available for public review.

14 (d) The changes made to this section by Chapter 865 of the
15 Statutes of 2001 do not apply to a schoolsite acquisition project or
16 a school construction project, if either of the following occurred
17 on or before October 14, 2001:

18 (1) The final preliminary endangerment assessment for the
19 project was approved by the Department of Toxic Substances
20 Control pursuant to this section as this section read on the date of
21 the approval.

22 (2) The school district seeking state funding for the project
23 completed a public hearing for the project pursuant to this section,
24 as this section read on the date of the hearing.

